



MERIT SYSTEMS PROTECTION BOARD APPEAL FORM (MSPB FORM 185)

INSTRUCTIONS FOR COMPLETING YOUR APPEAL

GENERAL: This form is intended to help you provide the Board with the information we need to process your appeal. We need this information to help us determine whether the Board has jurisdiction over your appeal, whether it has been filed within the applicable time limit, and what claims you are raising. You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. **See 5 C.F.R. Parts 1201, 1208 and 1209.** The Board will expect you to become familiar with these regulations, which are available on the MSPB website—**www.mspb.gov**—and in MSPB offices, agency personnel offices, agency libraries, and most public libraries. The Board's website also contains an electronic version of this form, addresses and telephone numbers of the MSPB regional and field offices, and additional information that explains the Board's practices and procedures.

WHAT PARTS TO COMPLETE: You may use this form for any of the following matters over which the Board has jurisdiction:

- An appeal of a Federal agency personnel action or decision that is appealable to the Board under a law, rule, or regulation;
- An appeal of an administrative decision or action by the Office of Personnel Management (OPM) or a Federal agency affecting your retirement rights or benefits;
- An Individual Right of Action (IRA) appeal under the Whistleblower Protection Act (WPA);
- An appeal under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or
- An appeal under the redress procedure of the Veterans Employment Opportunities Act (VEOA).

Complete **Part 1** of this form regardless of which type of appeal you are filing. **Your appeal must contain your signature, or the signature of your representative, in question 12 of Part 1. If it does not, your appeal will be rejected and returned to you.**

Complete **Part 2** if you are appealing a Federal agency personnel action or decision. **See 5 C.F.R. 1201.24(a).**

Complete **Part 3** if you are appealing an administrative decision or action affecting your retirement rights or benefits. **See 5 C.F.R. 1201.24(a).**

You may raise certain other claims in connection with an appeal of an agency personnel or retirement action or decision. If you wish to raise any of these claims at this time, check the appropriate box (or boxes) in **Part 4** and provide supporting information as an attachment to this form. You may raise such claims and provide the information later—but no later than the close of the conference(s) held to define the issues in your appeal. **See 5 C.F.R. 1201.24(b).**

Complete **Part 5 ONLY** if you are filing one of the following types of appeals:

- An IRA appeal under the WPA. **See 5 C.F.R. 1209.6;**
- A USERRA appeal. **See 5 C.F.R. 1208.13;** or
- A VEOA appeal. **See 5 C.F.R. 1208.23.**

If you complete Part 5, you **must** provide the additional information required by the Board's regulations for the particular type of appeal as an attachment to this form. The Board may consider **ONLY** the claim that the agency violated the particular law involved and may **NOT** consider the merits of the underlying action or decision.

If you wish to designate someone to represent you in this appeal, also complete and **sign Part 6, Designation of Representative.** **See 5 C.F.R. 1201.31.**

If you prefer to file your appeal electronically, please visit the MSPB website—www.mspb.gov—and follow the link to e-Appeal.

WHERE TO FILE AN APPEAL: You must file your appeal with the Board's **regional or field office** that is responsible for the geographic area where your duty station was located at the time the agency took the action or made the decision you are appealing. If you are appealing a retirement or suitability decision by the Office of Personnel Management (OPM), you must file your appeal with the Board's regional or field office that is responsible for the geographic area where you live. **See 5 C.F.R. Part 1201, Appendix II, 5 C.F.R. 1201.4(d), and 5 C.F.R. 1201.22(a).** If you have any questions, please contact the regional or field office with which you will file your appeal.

WHEN TO FILE AN APPEAL: Unless your appeal is covered by a law that sets a different filing time limit, you must file your appeal during the period that **begins on the day after the effective date**, if any, of the action or decision you are appealing. (You may not file your appeal **before** the effective date of the action or decision.) The filing period **ends on the 30th calendar day after the effective date, or on the 30th calendar day after the date you received the agency's decision, whichever is later.** If your appeal is late, it may be dismissed as untimely.

The 30-day filing time limit may be extended if you and the agency mutually agree **in writing** to try to resolve your dispute through an **alternative dispute resolution (ADR) process** before you file an appeal. If you and the agency reach such an agreement, you have an additional 30 calendar days—for a total of **60 calendar days**—to file your appeal with the Board if you are unable to resolve the dispute through the ADR process. This extension of the time for filing does not apply to appeals that are subject to a filing time limit established by law, e.g., IRA and VEOA appeals. **See 5 C.F.R. 1201.22(b) and (c).**

If you are filing an **IRA appeal**, you must file it within **65 days** of the date of the Office of Special Counsel (OSC) notice advising you that the Special Counsel will not seek corrective action, or within **60 days** after the date you received the OSC notice, whichever is later. **See 5 C.F.R. 1209.5.**

If you are filing a **USERRA appeal**, there is **no time limit** for filing. **See 5 C.F.R. 1208.12.** If you file a USERRA complaint with the Department of Labor first, you must exhaust the procedures of the Department before you may file an appeal with the Board.

If you are filing a **VEOA appeal**, you must file it **within 15 days** after the date you received notice that the Department of Labor was unable to resolve the matter. **See 5 C.F.R. 1208.22. Note: Before filing with the Board, you must file a VEOA complaint with the Department of Labor, and the Department is allowed at least 60 days to try to resolve the matter.**

In all of the above instances, the date of filing is the date your appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, or the date of receipt in the regional or field office if you personally deliver it.

HOW TO FILE AN APPEAL: You may file your appeal by mail, by facsimile, by commercial overnight delivery, or by personal delivery. **See 5 C.F.R. 1201.22(d).** You must submit **an original and one copy** of both your appeal and all attachments. You may supplement your response to any question on a separate sheet of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on 8 1/2" x 11" paper. **Please submit only the attachments requested in this form.** You will have an opportunity to submit other documentary evidence later in the proceeding.

Privacy Act Statement: *This form requests personal information that is relevant and necessary to reach a decision in your appeal. The Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Because your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.*

You should know that the decisions of the Merit Systems Protection Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a database for program statistics.

Public Reporting Burden: *The public reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with an average of 60 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Financial and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.*

PART 1—Appellant and Agency Information

Complete this part regardless of which type of appeal you are filing. Then proceed to Part 2 if you are appealing an agency personnel action or decision, to Part 3 if you are appealing an administrative decision or action affecting your retirement rights or benefits, or to Part 5 if you are filing an IRA appeal, USERRA appeal, or VEOA appeal.

Please type or print legibly.

1. Name *(last, first, middle initial)*

2. Present address *(number and street, city, State, and Zip code)*

You must notify the Board in writing of any change in your mailing address while your appeal is pending.

Address:

City, State, Zip code:

3. Telephone Numbers *(include area code)* and E-Mail Address

You must notify the Board in writing of any change in your telephone number(s) or e-mail address while your appeal is pending.

Home: ()

Work: ()

FAX: ()

Other: ()

E-mail Address:

4. Name and address of the agency that took the action or made the decision you are appealing *(include bureau or division, street address, city, State and Zip code)*

Agency Name:

Bureau:

Address:

City, State, Zip code:

5. Your Federal employment status at the time of the action or decision you are appealing:

☐ Permanent ☐ Temporary ☐ Term

☐ Seasonal ☐ Applicant ☐ Retired

☐ None

6. Type of appointment (if applicable):

☐ Competitive ☐ Excepted

☐ Postal Service ☐ SES

☐ Other *(describe)*:

7. Your position, title, grade, and duty station at the time of the action or decision you are appealing (if applicable):

Occupational Series:

Position Title:

Grade:

Duty Station:

8. Are you **entitled** to veterans' preference?
See 5 U.S.C. 2108.

☐ Yes

☐ No

9. Length of Government service (if applicable):

10. Were you serving a probationary or trial period at the time of the action or decision you are appealing?

☐ Yes

☐ No

CONTINUED ON REVERSE

PART 1—Appellant and Agency Information (continued)

HEARING: You may have a right to a hearing before an administrative judge. If you choose to have a hearing, the Board will notify you when and where it is to be held. If you do not want a hearing, the Board will make its decision on the basis of the submissions of the parties.

11. Do you want a hearing? ☐ Yes ☐ No

12. I certify that all of the statements made in this form and any attachments are true, complete, and correct to the best of my knowledge and belief.

Signature of Appellant or Representative:

Date:

PART 2—Agency Personnel Action or Decision (non-retirement)

Complete this part if you are appealing an agency personnel action or decision (other than a decision or action affecting your retirement rights or benefits) that is appealable to the Board under a law, rule, or regulation. See 5 C.F.R. 1201.3 (a) for a list of appealable personnel actions and decisions. If the personnel action or decision is appealable to the Board, you should have received a final decision letter from the agency that informs you of your right to file an appeal with the Board.

13. Check the box that best describes the agency **personnel action or decision** you are appealing. (If you are appealing more than one action or decision, check each box that applies.) **Attach a copy** of the proposal letter and decision letter (if any). If an SF-50 or its equivalent was issued and is available, attach it now; however, DO NOT delay filing your appeal because you do not have an SF-50. You may submit the SF-50 when it becomes available.

- ☐ Removal ☐ Reduction in grade or pay ☐ Suspension for more than 14 days
- ☐ Separation, demotion, or furlough for more than 30 days by reduction in force (RIF)
- ☐ Furlough of 30 days or less ☐ Termination during probationary period
- ☐ Failure to restore/reemploy/reinstate or improper restoration/reemployment/reinstatement
- ☐ Negative suitability determination ☐ Denial of within-grade increase
- ☐ Other action, *describe*:

14. Date you received the agency's proposal letter (if any) (*month, day, year*) (**Attach a copy**):

15. Date you received the agency's final decision letter (if any) (*month, day, year*) (**Attach a copy**):

16. Effective date (if any) of the agency action or decision (*month, day, year*):

17. Prior to filing this appeal, did you and the agency mutually agree in writing to try to resolve the matter through an alternative dispute resolution (ADR) process?

☐ Yes (**Attach a copy of the agreement**)

☐ No

**PART 2—Agency Personnel Action or Decision (non-retirement)
(continued)**

18. Explain briefly why you think the agency was wrong in taking this action or making this decision.

19. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

20. **With respect to the agency personnel action or decision you are appealing**, have you, or has anyone on your behalf, filed a grievance under a negotiated grievance procedure provided by a collective bargaining agreement?

☐ Yes

☐ No

If "Yes," **attach a copy of the grievance**, enter the date it was filed (*month, day, year*), and enter the place where it was filed **if different from your answer to question 4 in Part 1**:

Agency Name:

Date Filed:

Bureau:

Address:

City, State, Zip code:

If a decision on the grievance has been issued, **attach a copy of the decision** and enter the date it was issued (*month, day, year*):

PART 3—OPM or Agency Retirement Decision or Action

Complete this part if you are appealing an administrative decision or action by the Office of Personnel Management (OPM) or a Federal agency affecting your rights or benefits under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). See 5 C.F.R. 1201.3(a)(6). If the decision or action is appealable to the Board, you should have received a final decision from OPM or the agency that informs you of your right to file an appeal with the Board.

21. In which retirement system are you enrolled?

☐ CSRS

☐ CSRS Offset

☐ FERS

☐ Other, *describe*:

22. Are you a:

☐ Current Employee

☐ Annuitant

☐ Surviving Spouse

☐ Other, *describe*:

CONTINUED ON REVERSE

PART 3—OPM or Agency Retirement Decision or Action (continued)

23. If retired, date of retirement (*month, day, year*):

24. Are you appealing an action or decision concerning a retirement coverage error under the provisions of the Federal Erroneous Retirement Coverage Corrections Act (FERCCA)?

☐ Yes

☐ No

25. Describe the retirement decision or action you are appealing.

Answer either Question 26 OR Question 27, whichever applies to your appeal.

26. If you are appealing an OPM retirement decision, have you received a final or reconsideration decision from OPM?

☐ Yes (**Attach a copy**)

☐ No

If "Yes," on what date did you receive the OPM decision (*month, day, year*)?

27. If you are appealing a retirement decision or action by a Federal agency other than OPM, have you received a final decision from that agency?

☐ Yes (**Attach a copy**)

☐ No

If "Yes," on what date did you receive the agency decision (*month, day, year*)?

28. Why do you think the decision or action was wrong?

29. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

PART 4—Other Claims

If you completed Part 2 to appeal an agency personnel action or decision or Part 3 to appeal an administrative decision or action affecting your retirement rights or benefits, you may raise certain other claims in connection with that appeal. Such claims must be raised no later than the close of the conference(s) held to define the issues in your appeal. **See 5 C.F.R. 1201.24(b).** If you wish to raise any of these claims at this time, check the appropriate box (or boxes) in this part to indicate the claim(s) you are raising. Provide information supporting the claim(s), including any information required by the Board's regulations for the specific type of claim(s), on a separate sheet of paper and attach it to this form. If you prefer, you may raise such claims later—but no later than the close of the conference(s) on your appeal. **Remember that you are responsible for proving each claim you raise.**

PART 4—Other Claims (continued)

30. Check the appropriate box (or boxes) for any claim(s) that you wish to raise at this time **in connection with the action or decision you are appealing in Part 2 or Part 3**, and provide supporting information as an **attachment** to this form:

- ☐ A claim that the agency made errors in applying required procedures (harmful error), that the agency action or decision was the result of a prohibited personnel practice, or that the agency action or decision was not in accordance with law. **See 5 C.F.R. 1201.56(b) and (c)(3)**. For prohibited personnel practice claims, also **see 5 U.S.C. 2302(b)**.
- ☐ A claim that the agency action or decision was the result of prohibited discrimination (race, color, religion, sex, national origin, disability, age). **See 5 C.F.R. 1201.151 and 1201.153**. If you previously filed a **formal** discrimination complaint with the agency concerning the action or decision you are appealing, **attach a copy of the complaint**. If the agency has issued a final decision on your discrimination complaint, **attach a copy of the decision**.
- ☐ A claim that the agency action or decision was based on whistleblowing. **See 5 U.S.C. 2302(b)(8), 5 C.F.R. 1209.2(b)(2), and 5 C.F.R. 1209.6(a)**. If you previously sought corrective action from the Office of Special Counsel (OSC) concerning the same disclosure(s) and the same agency action or decision you are appealing, **attach a copy of your request to OSC** for corrective action. If you have received written notice from OSC of your right to appeal to the Board, **attach a copy of the OSC notice**. Also **see 5 C.F.R. 1209.8 and 1209.9** if you wish to request a **stay** of the agency action or decision.
- ☐ A claim that the agency violated your rights under the Uniformed Services Employment or Reemployment Rights Act (USERRA) (other than rights related to the Thrift Savings Plan for Federal employees) in taking the action or making the decision. **See 38 U.S.C. 4322 and 4324, 5 C.F.R. 1208.11, and 5 C.F.R. 1208.13**. If you previously filed a USERRA complaint with the Department of Labor (DOL) on this matter, **attach a copy of the complaint**. If you have received written notice from DOL that your USERRA complaint could not be resolved, **attach a copy of the DOL notice**.
- ☐ A claim that the agency violated a law or regulation relating to veterans' preference in taking the action or making the decision. **IMPORTANT:** If you choose to make your veterans' preference claim in connection with this appeal of an agency action or decision, you may NOT also file a complaint under the redress procedure of the Veterans Employment Opportunities Act (VEOA) with DOL. **See 5 U.S.C. 3330a(e) and 5 C.F.R. 1208.26**.

PART 5—IRA Appeal, USERRA Appeal, or VEOA Appeal

Complete the applicable question in this part **ONLY** if you are filing an Individual Right of Action (IRA) appeal under the Whistleblower Protection Act, a Uniformed Services Employment and Reemployment Rights Act (USERRA) appeal, or a Veterans Employment Opportunities Act (VEOA) appeal.

Before you may file an IRA appeal with the Board, you must first file a whistleblower complaint with the Office of Special Counsel (OSC) and exhaust the procedures of that office. **See 5 C.F.R. 1209.2(b)(1)**. To pursue redress for a USERRA violation, you may either file a USERRA complaint with the Department of Labor (DOL) or file an appeal with the Board. However, if you filed a USERRA complaint with DOL, you must exhaust DOL procedures before you may file an appeal with the Board. **See 5 C.F.R. 1208.11**. Before you may file a VEOA appeal with the Board, you must first file a VEOA complaint with DOL and allow DOL at least 60 days to try to resolve the matter. **See 5 C.F.R. 1208.21**.

Answer Question 31 **ONLY** if you are filing an IRA appeal.

31. Have you exhausted OSC procedures with respect to your whistleblower complaint, i.e., with respect to the same disclosure(s) and the same agency action or decision underlying your IRA appeal? ☐ Yes ☐ No

If "Yes," **attach a copy of your complaint to OSC**, provide the information required by the Board's regulations at **5 C.F.R. 1209.6(a)** as an attachment to this form, and explain what action you would like the Board to take in this case. If you have received written notice from OSC of your right to file an IRA appeal with the Board, **attach a copy of the OSC notice**. Also **see 5 C.F.R. 1209.9** if you wish to request a **stay** of the agency action or decision.

CONTINUED ON REVERSE

Answer Question 32 ONLY if you are filing a USERRA appeal.

32. Have you previously filed a USERRA complaint with DOL on this matter? ☐ Yes ☐ No

If "Yes," **attach a copy of your USERRA complaint to DOL**, provide the information required by the Board's regulations at **5 C.F.R. 1208.13(a)** as an attachment to this form, and explain what action you would like the Board to take in this case. If you have received written notice from DOL that your USERRA complaint could not be resolved, **attach a copy of the DOL notice**. If your USERRA complaint was referred to OSC and OSC declined to represent you, **attach a copy of the OSC notice**. If OSC is representing you in your USERRA appeal, complete Part 6.

If "No," provide the information required by the Board's regulations at **5 C.F.R. 1208.13(a)** as an attachment to this form, and explain what action you would like the Board to take in this case.

Answer Question 33 ONLY if you are filing a VEOA appeal.

33. Have you filed a VEOA complaint with DOL and allowed DOL at least 60 days to try to resolve this matter? ☐ Yes ☐ No

If "Yes," **attach a copy of your VEOA complaint to DOL**, provide the information required by the Board's regulations at **5 C.F.R. 1208.23(a)** as an attachment to this form, and explain what action you would like the Board to take in this case. If you have received written notice from DOL that your VEOA complaint could not be resolved, **attach a copy of the DOL notice** and provide the **date** you received it. If more than 60 days have passed since you filed your VEOA complaint with DOL and your complaint has not been resolved, **attach a copy of your notice to DOL** stating your intent to appeal to the Board and provide the **date** you sent it to DOL.

PART 6—Designation of Representative

Complete this part to designate an organization or a person who has agreed to represent you in your appeal before the Board. **If you are representing yourself, do NOT complete this part.** By designating a representative, you agree to allow the Board to give your representative all information concerning the appeal. **Any changes of this designation must be sent in writing to the MSPB office handling the appeal and to the other party. See 5 C.F.R. 1201.31.**

34. Do you wish to designate an individual or organization to represent you in this proceeding before the Board? (You may designate a representative at any time. However, the processing of your appeal will not normally be delayed because of any difficulty you may have in obtaining a representative.)

☐ Yes *(Complete the information below and sign)* ☐ No

DESIGNATION:

"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. **I understand that any limitation on this settlement authority must be filed in writing with the Board.**

Representative's address *(number and street, city, State and ZIP code)*.

Address:

City, State, Zip code:

Representative's telephone numbers *(include area code)* and e-mail address:

Office:

FAX:

Other:

E-mail address:

SIGN BELOW TO MAKE YOUR DESIGNATION OF REPRESENTATIVE EFFECTIVE

Appellant's Signature

Date